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	DODE-00	DOYE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
	FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	LAB-01
	L-00	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01
	PA-00	PM-00	PRS-00	ACE-00	P-00	SP-00	IRM-00
	SSO-00	STR-00	TRSE-00	USIE-00	R-00	PMB-00	DSCC-00
	PRM-01	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00	/010W

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FM AMEMBASSY HARARE
TO SECSTATE WASHDC IMMEDIATE 8172
INFO NSC WASHDC IMMEDIATE
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000644

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER
LONDON FOR GURNEY
PARIS FOR WILLIAMS
NAIROBI FOR PFLAUMER

E.O. 12958: DECL. 02/05/11
TAGS: PGOV PHUM PINS PINR ZI
SUBJECT: ZIMBABWEAN GOVERNMENT HOUNDS SUPREME COURT CHIEF
JUSTICE INTO RETIREMENT

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CLASSIFIED BY CHARGE D'AFFAIRES EARL IRVING. REASONS: 1.5
(B) AND (D).

REF: A) HARARE 613 B) HARARE 538 C) HARARE 392
D) HARARE 354 E) HARARE 106

11. (U) JUSTICE MINISTER PATRICK CHINAMASA ANNOUNCED ON FEBRUARY 2 THE EARLY RETIREMENT OF CHIEF JUSTICE ANTHONY GUBBAY. SHORTLY AFTER MEETING WITH GUBBAY IN HIS SUPREME COURT CHAMBERS, CHINAMASA ISSUED A STATEMENT ANNOUNCING THAT THE CHIEF JUSTICE WOULD TAKE FOUR MONTHS OF LEAVE BEGINNING ON MARCH 1, THEN WOULD RETIRE ON JUNE 30, NINE MONTHS BEFORE HE REACHES HIS MANDATORY RETIREMENT AGE OF 170. THE MEETING WITH CHINAMASA FOLLOWS A JANUARY 22 MEETING BETWEEN GUBBAY AND VICE-PRESIDENT MUZENDA (REF B), DURING WHICH, ACCORDING TO PRESS REPORTS, GUBBAY THREATENED TO RESIGN AFTER MUZENDA DISMISSED HIS REQUEST FOR PROTECTION AGAINST INCREASING HARASSMENT BY SO-CALLED WAR VETERANS. CHINAMASA SUBSEQUENTLY INFORMED GUBBAY, IN THE FEBRUARY 2 MEETING, THAT HE HAD BEEN SENT TO ACCEPT GUBBAY'S RESIGNATION.

12. (C) WE WERE SURPRISED BY THE ABRUPTNESS OF GUBBAY'S DEPARTURE, PARTICULARLY GIVEN THE CHIEF JUSTICE'S ASSURANCES TO US ON JANUARY 26 (REF B) THAT HE INTENDED TO REMAIN ON THE COURT UNTIL AT LEAST THE END OF THE YEAR. THE CHARGE PHONED GUBBAY ON FEBRUARY 5 TO SOLICIT HIS ACCOUNT OF WHAT HAD TRANSPRIRED IN THE CHINAMASA MEETING. WITHOUT ELABORATING, GUBBAY TOLD THE CHARGE THAT HE IS NOT LEAVING OF HIS OWN FREE WILL. (NOTE: ONE INFORMED SOURCE TOLD US THAT UPON READING THE TRANSCRIPT OF MUZENDA'S

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MEETING, MUGABE REPORTEDLY SAID "TELL HIM WE ACCEPT HIS RESIGNATION." END NOTE.) THE CHIEF JUSTICE CONFIRMED THAT HE WILL TAKE FOUR MONTHS OF ACCUMULATED LEAVE BEGINNING ON MARCH 1 AND WILL RETIRE ON JUNE 30. PRESIDENT MUGABE, ACCORDING TO GUBBAY, PLANS TO APPOINT JUDGE PRESIDENT OF THE HIGH COURT GODFREY CHIDYAUSIKU AS ACTING CHIEF JUSTICE DURING THE FOUR-MONTH LEAVE AND, PRESUMABLY, AS HIS FORMAL SUCCESSOR UPON GUBBAY'S OFFICIAL RETIREMENT. GUBBAY SAID HE GREATLY APPRECIATED THE LARGE NUMBER OF MESSAGES OF SUPPORT HE HAD RECEIVED DURING THE WEEKEND.

13. (C) IN A SEPARATE CONVERSATION WITH CHARGE DURING THE FEBRUARY 3-4 WEEKEND, TOM WALTER, MANAGING DIRECTOR OF MOBIL OIL ZIMBABWE AND AN AMERICAN CITIZEN, EXPRESSED ALARM AT THE LIKELY DETRIMENTAL IMPACT OF GUBBAY'S EARLY RETIREMENT ON BUSINESS CONFIDENCE, ALREADY AT AN ALL-TIME LOW. THE CHIEF JUSTICE'S DEPARTURE PROMPTED WALTER TO WRITE A LETTER TO HIS HEADQUARTERS RECOMMENDING A REASSESSMENT OF MOBIL'S PRESENCE IN ZIMBABWE.

COMMENT

14. (C) CHINAMASA'S ANNOUNCEMENT OF GUBBAY'S EARLY RETIREMENT FOLLOWED MONTHS OF GOVERNMENT-SANCTIONED HARASSMENT AND INTIMIDATION (REFTELS) OF THE WELL-RESPECTED CHIEF JUSTICE AND -- TO A LESSER DEGREE -- HIS COLLEAGUES ON THE COUNTRY'S HIGHEST BENCH. INDEED, GUBBAY'S DEPARTURE CONCLUDED A WEEK-AND-A-HALF OF ESCALATING INTIMIDATION OF THE INDEPENDENT MEDIA, THE JUDICIARY, TOWN COUNCILS AROUND THE COUNTRY, AND MANY OTHER INDIVIDUALS AND INSTITUTIONS

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WHICH HAVE EXPRESSED -- OR ARE SUSPECTED OF HARBORING --
VIEWS CONTRARY TO THOSE ESPOUSED BY THE GOVERNMENT.
GUBBAY'S COMMENT TO US THAT HE IS NOT LEAVING OF HIS OWN
FREE WILL CONFIRMED OUR SUSPICION THAT HIS DEPARTURE IS
UNDER DURESS.

15. (C) THE SHORT-TERM IMPACT OF THE EXPECTED PROMOTION OF THE UNABASHEDLY PRO-ZANU-PF GODFREY CHIDYAUSIKU IS UNCLEAR, AS THE CHIEF JUSTICE IS, IN PRACTICE, FIRST AMONG EQUALS AND WILL BE UNABLE TO RUN ROUGHSHOD OVER HIS FOUR FELLOW JUSTICES. HOWEVER, ONE SUPREME COURT JUSTICE, WILSON SANDURA, REPORTEDLY HAS COMMENTED PRIVATELY TO FRIENDS THAT HE WOULD STEP DOWN IF CHIDYAUSIKU IS APPOINTED CHIEF JUSTICE, AND WE EXPECT OTHERS WOULD BE INCLINED TO FOLLOW SUIT. SUPREME COURT JUSTICE NICHOLAS MCNALLY IS EXPECTED TO REACHED THE MANDATORY RETIREMENT AGE IN THE NEAR FUTURE. SUCH AN EXODUS WOULD PLAY INTO THE GOVERNMENT'S HANDS, PAVING THE WAY FOR THE PRESIDENT TO APPOINT JURISTS WILLING TO TOE THE ZANU-PF LINE, A DEVELOPMENT WHICH WOULD HAVE A CHILLING EFFECT ON THE RULE OF LAW AND CONSOLIDATION OF DEMOCRACY. INDEED, GUBBAY'S EARLY RETIREMENT -- AND THE CIRCUMSTANCES SURROUNDING IT -- HAVE SENT MANY ZIMBABWEANS INTO A PANIC, AS THEY HAVE RELIED ON THE SUPREME COURT TO BE THE LAST LINE OF DEFENSE AGAINST PRESIDENT MUGABE'S CONSOLIDATION OF ABSOLUTE POWER.

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